

JAMES DAL BON
CA BAR #157942
LAW OFFICES OF JAMES DAL BON
28 NORTH 1ST SUITE 210
SAN JOSE, CA 95113
TEL (408)297-4729
FAX (408)297-4728

ATTORNEY FOR PLAINTIFF

FILED

AUG 01 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

E-FILING

Pa
#8
ST

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

C08 03722

RS

RAFAEL SENCHAM

Plaintiff,

vs.

DISH DASH LLC, dba DISHDASH

RESTAURANT NADIAH MSHASHA dba

DISHDASH RESTAURANT AND DOES 1-

10

Defendants

Case No.

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL:

- 1) Violation of California Labor Code Section 510;
- 2) Violations of the Federal Fair Labor Standards Act;
- 3) Violation of California Business and Professions Code Section 17200; and
- 4) Violation of California Labor Code Section 201; and
- 5) Violation of California Labor Code Section 226.

NATURE OF CLAIM

This is an action on behalf of DISH DASH LLC, dba DISHDASH RESTAURANT, NADIAH MSHASHA dba DISHDASH RESTAURANT AND DOES 1-10 during the last four years prior to the filing of this Complaint, seeking damages arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes.

Plaintiff seeks compensatory damages for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b), waiting time penalties under California

1 Labor Code § 203, damages for inadequate pay statements under California Labor Code Section
2 226, and attorney's fees, costs, pre judgment interest pursuant to California Labor Code §
3 1194(a) and 29 U.S.C. § 216(b), and restitution under California Unfair Trade Practices Act
4 under California Business and Professions Code § 17203.

5 **PARTIES**

- 6 1. At all times relevant herein, Plaintiff Rafael Sencham is an individual resident of San
7 Jose, California.
- 8 2. At all times relevant herein, Defendant DISH DASH LLC., is a Limited Liability
9 Company having its principal place of business in Santa Clara County, California.
- 10 3. At all times relevant herein, Defendant NADIAH MSHASHA is an individual doing
11 business as DISH DASH RESTAURANT in Santa Clara, California.
- 12 4. Individual Defendants DOES 1-10, at all times relevant herein, are, according to
13 information and belief, owners, managers, directors, associates, related to, or employees
14 of DISH DASH LLC., having control over the Plaintiff's work condition and work
15 situation.

16 **GENERAL ALLEGATIONS**

- 17 5. At all times relevant herein, Plaintiff was an employee of defendants DISH DASH LLC.,
18 and NADIAH MSHASHA doing business as a restaurant in Santa Clara County,
19 California.
- 20 6. Plaintiff was according to information and belief, an employee of Defendants acting in
21 the normal course and scope of his employment duties with Defendants.
- 22 7. During the course of Plaintiff's employment with Defendants, Plaintiff regularly worked
23 in excess of 8 hours per day and more than 40 hours per week.
- 24 8. Plaintiff was paid on an hourly basis.
- 25

1 9. Plaintiff did not perform "exempt" duties in his position as a kitchen worker with
 2 Defendants and thus was not subject to any exemption under the Fair Labor Standards
 3 Act, 29 CFR 541.112, 541.209 and 541.209. The Plaintiff was not even marginally
 4 responsible for management or administrative functions, and his primary job did not
 5 require him to exercise independent discretion and judgment or regularly require
 6 invention or imagination in a recognized field of artistic endeavor more than fifty percent
 7 of his working time.

8 10. At no time during the Plaintiff's employment did Plaintiff maintain any professional
 9 license with the state or practice any recognized profession, nor did Plaintiff exclusively
 10 manage any division of Defendant's restaurant where he customarily and regularly
 11 exercised discretionary powers or perform services of management. Plaintiff did not
 12 directly supervise any employees nor did he participate in the development of general
 13 administrative policies of DISH DASH LLC.

14 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510**

15 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

16 11. Plaintiff re-alleges s and incorporates paragraphs 1-10 as if fully stated herein.

17 12. California Labor Code Section 501, applicable at all times relevant herein to Plaintiff's
 18 employment by Defendants, provides that all employees is entitled to payment at the rate
 19 of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and
 20 double time for hours in excess of 12 in one day.

21 13. During the course of employment with Defendants, Plaintiff regularly worked in excess
 22 of 8 hours a day and 40 hours per week, however Defendant's knowingly and willingly
 23 failed to pay Plaintiff overtime wages as required by law.
 24
 25

1 14. California Labor Code Section 1194 provides that it is unlawful for employers not to
2 make the required overtime payments identified in the preceding paragraph and that
3 employees not paid such payments can recover any monies owed by civil action.

4 15. Defendants therefore owe Plaintiff overtime wages not properly paid to Plaintiff in an
5 amount to be determined at trial.

6 16. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the
7 amount owed.

8 17. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor
9 Code Sections 510 and 1194 and is therefore unlawful.

10 18. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff
11 reasonable attorney's fees and costs incurred by him in this action.

12 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**
13 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

14 19. Plaintiff re-alleges and incorporates paragraphs 1-18 as if fully stated herein.

15 20. At all relevant times herein, Plaintiff's employment was subject to the provisions of the
16 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and
17 Plaintiff was individual employees covered by virtue of Plaintiff's direct engagement in
18 interstate commerce.

19 21. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work
20 performed in excess of forty hours per week, unless specifically exempted by the law.

21 22. Although Plaintiff was not so exempt during employment with Defendants, and
22 Defendants knowingly caused and permitted Plaintiff to regularly work in excess of forty
23 hours per week without paying Plaintiff one and one half of Plaintiff's regular rate of
24 pay.
25

1 23. By not paying overtime wages in compliance with the FLSA, defendants violated
2 Plaintiff's rights under the FLSA.

3 24. As a direct and proximate result of defendants' failure to pay proper wages under the
4 FLSA, Plaintiff incurred general damages in the form of lost overtime wages.

5 25. Defendants intentionally, with reckless disregard for their responsibilities under the
6 FLSA, and without good cause, failed to pay Plaintiff proper wages, and thus defendants
7 is liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,
8 pursuant to 29 U.S.C. § 216(b) of the FLSA.

9 26. Defendants therefore owe Plaintiff overtime not properly paid to Plaintiff, in an amount
10 to be determined at trial.

11 27. Plaintiff was required to retain legal assistance in order to bring this action and, as such,
12 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the
13 FLSA.

14 **COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201**

15 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

16 28. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-27 as if fully stated
17 herein.

18 29. At the time Plaintiff's employment with Defendants was terminated, defendant's owed
19 Plaintiff certain unpaid overtime wages in amounts previously alleged d.

20 30. Failure to pay wages owed at an employee's termination as required by Labor Code §201
21 subjects the employer the payment of a penalty equaling up to 30 days wages, as
22 provided for in Labor Code § 203.

23 31. As of this date, Defendants have failed and refused, and continue to fail and refuse, to
24 pay the amount due, thus making defendants liable to Plaintiff for penalties equal to
25 thirty (30) days wages, in an amount to be determined at trial.

1 32. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff
2 reasonable attorney's fees and costs incurred in this action.

3 33. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on
4 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),
5 accruing from the date the wages was due and payable.

6 **COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE**
7 **SECTION 17200 UNFAIR BUSINESS PRACTICES**

8 34. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-33 as if fully stated
9 herein.

10 35. At all times relevant herein, Plaintiff 's employment with Defendant was subject to the
11 California Labor Code and applicable Wage Orders promulgated by the California
12 Industrial Welfare Commission, which required all employees to be paid overtime for
13 work performed in excess of forty hours per week or eight hours per day, unless
14 specifically exempted by law.

15 36. At all times relevant herein, as the employer of Plaintiff, defendants was subject to the
16 California Unfair Trade Practices Act (California Business and Professions Code §
17 §17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable
18 California Labor Code and applicable Wage Orders.

19 37. During the period Plaintiff was employed with Defendants, Defendants failed to pay
20 Plaintiff legally required overtime pay to which he was legally entitled, with defendants
21 keeping to themselves the amount which should have been paid to Plaintiff.

22 38. In doing so, defendants violated California Unfair Trade Practices Act, Business and
23 Professions Code §17200, et seq. by committing acts prohibited by applicable California
24 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a
25

1 competitive advantage over other employers and businesses with whom defendants was
2 in competition and who was in compliance with the law.

3 39. As a direct and proximate result of defendants' violations and failure to pay the required
4 overtime pay, the Plaintiff 's rights under the law was violated and the Plaintiff incurred
5 general damages in the form of unpaid wages in an amount to be determined at trial.

6 40. Defendants had been aware of the existence and requirements of the Unfair Trade
7 Practices Act and the requirements of State and Federal wage and hour laws, but
8 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.

9 41. Plaintiff, having been illegally deprived of the overtime pay to which he was legally
10 entitled, herein seeks restitution of such wages pursuant to the Business and Professions
11 Code §17203 in an amount to be determined at trial.

12 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

13 **INADEQUATE PAY STATEMENTS**

14 42. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-41 as if fully stated
15 herein.

16 43. California Labor Code Section 226 provides that all employers shall provide to
17 employees accurate and complete wage statements including, but not to limited to, an
18 accurate and current statement of all rates paid for all regular and overtime hours worked
19 during the pay-period, a complete and itemized statement of deductions, net wages
20 earned, the dates fir which payment is being made, any and all applicable piece rates, and
21 the current address ad name of the employer.

22 44. California Labor Code Section 226 further provides that any employee suffering injury
23 due to a willful violation of the aforementioned obligations may collect the greater of
24 either actual damages or 50\$ for the first inadequate pay statement and 100\$ for each
25 inadequate statement thereafter.

1 45. During the course of Plaintiff 's employment, defendants consistently failed to provide
2 Plaintiff with adequate pay statements as required by California Labor Code §226.

3 46. Defendants failed to provide such adequate statements willingly and with full knowledge
4 of their obligations under Section 226.

5 47. Defendants' failure to provide such adequate statements has caused injury to the Plaintiff.

6 48. Plaintiff is therefore legally entitled to recover actual damages caused by defendants'
7 failure to provide proper records, in an amount to be determined at trial.

8 49. Plaintiff has incurred costs and fees in bringing this action and seeks to recover such
9 costs under California Labor Code §226.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for the following relief:

12 50. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an
13 amount to be determined;

14 51. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount to be
15 determined at trial;

16 52. For restitution of unpaid overtime pay pursuant to California Business and Professions
17 Code §17203 in an amount to be determined at trial;

18 53. For waiting time penalty damages of thirty days wages to Plaintiff , pursuant to
19 California Labor Code § 203 in an amount to be determined at trial;

20 54. Damages and penalties for inadequate pay statements pursuant to California Labor Code
21 Section 226 in an amount to be determined at trial;

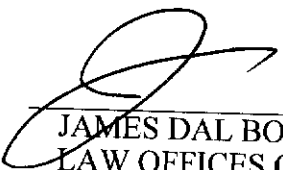
22 55. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid
23 salaries pursuant to California Labor Code §1194(a);

24 56. Plaintiff asks the court to award reasonable attorney's fees pursuant to California Labor
25 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

1 57. For costs of suit herein; and

2 58. For such other and further relief as the Court may deem appropriate.

3
4 AUGUST 1, 2008

5
6
7
8
9
10
11 
12 JAMES DAL BON
13 LAW OFFICES OF JAMES
14 DAL BON
15 28 NORTH 1ST STREET
16 SUITE 210,
17 SAN JOSE, CA 95113
18
19
20
21
22
23
24
25

JS 44 - No. 0011F (RS, 9/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I. (a) PLAINTIFFS

RAFAEL CASTRORAFEL SENCHAM

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

DISH DASH LLC, dba DISHDASH RESTAURANT
NADIAH MSHASHA dba DISHDASH
RESTAURANT AND DOES 1-10COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

RS

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of James Dal Bon
28 North 1st Street Suite 210, San Jose, CA 95113

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 160 Other Contract <input type="checkbox"/> 196 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 610 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 630 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 640 Mandamus & Other <input type="checkbox"/> 650 Civil Rights <input type="checkbox"/> 655 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 29 U.S.C. 209, et seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ 43,000.00
UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A "X" IN ONE BOX ONLY) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE 8/1/08 SIGNATURE OF ATTORNEY OF RECORD

Digitally signed by James Dal Bon
Date: 2008.08.01 14:41:00 -07'00'